

AO91 (Rev. 8/01) Criminal Complaint

UNITED STATES DISTRICT COURT

United States Courts
Southern District of Texas
FILED

SEP 05 2008

Michael N. Milby, Clerk of Court

SOUTHERN

DISTRICT OF

TEXAS

UNITED STATES OF AMERICA
V.

CRIMINAL COMPLAINT

CHERRY WONG

Case Number:

H-08-664M

(Name and Address of Defendant)



I, the undersigned complainant state that the following is true and correct to the best of my knowledge and belief. On or about March 15, 2007 in Harris County, in the Southern District of Texas defendant(s) did,

(Track Statutory Language of Offense)

knowingly and intentionally conspire with subjects, known and unknown, to knowingly and intentionally traffick in counterfeit pharmaceutical drugs namely Viagra and Cialis without the authorization of the registered holders of the trademarks.

in violation of Title 18 & 21 United States Code, Section(s) 2320(a) and 331(a)

I further state that I am a(n) ICE Special Agent and that this complaint is based on the following facts:

See Attached Affidavit

Continued on the attached sheet and made a part of this complaint: ☒ Yes ☐ No

Signature of Complainant

S/A Demetrius Flowers

Printed Name of Complainant

Sworn to before me and signed in my presence,

September 5, 2008

Date

at

Houston, Texas

City and State

Stephen WM. Smith, United States Magistrate
Name and Title of Judicial Officer

Signature of Judicial Officer

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

1. I, Demetrius L. Flowers, being duly sworn, do hereby depose and state:

I am a Special Agent with the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), Office of Investigations. I have been so employed by ICE since March 2004, and I am currently assigned to the Houston, Texas, Office of the Special Agent in Charge. Since joining ICE, I have participated in multiple investigations involving violations of federal law including; drug smuggling, money laundering, intellectual property laws, child pornography, and illegal immigration. I am currently assigned to investigate criminal violations relating to intellectual property laws including violations pertaining to the illegal production, distribution, receipt and possession of counterfeit pharmaceutical drugs, in violation of 18 U.S.C. 2320(a). I have received training regarding the trafficking of counterfeit goods, including the manufacture and distribution of counterfeit pharmaceuticals. Prior to becoming an ICE Special Agent, I served six (6) years in the United States Marine Corps (USMC) obtaining the rank of Sergeant.
2. This affidavit is in support of a criminal complaint for the arrest of CHERRY WONG for conspiracy to traffic and trafficking in counterfeit pharmaceuticals drugs.

INTRODUCTION

3. The United States Food and Drug Administration (FDA) is the agency of the United States charged with the responsibility of protecting the health and safety of the American public by ensuring, among other things, that drugs sold for administration to humans bear labeling containing true and accurate information. The FDA's responsibilities include regulating the labeling and distributing of prescription drugs shipped or received in interstate commerce. United States Immigration Customs Enforcement (ICE) is an agency of the United States charged with the responsibility of investigating the smuggling of contraband into the United States to include counterfeit merchandise. Under the Food, Drug and Cosmetic Act, the definition of a "drug" includes articles which (1) are intended for use in the diagnoses, cure, mitigation, treatment or prevention of disease in man, and (2) are intended to affect the structure or function of the body of man. Due to the toxicity and other potential harmful effect, certain drugs are not considered safe for use except for use under the supervision of a practitioner licensed by law to administer such drugs. These drugs are known as prescription drugs.
4. Viagra was a prescription drug product that had been approved by the FDA for distribution within the United States. Pfizer Pharmaceuticals (Pfizer) had the exclusive right to manufacture Viagra for distribution within the United States.

The name “Viagra” was a trademark owned by Pfizer and is registered in the principal registry in the United States Patent and Trademark Office.

Cialis was a prescription drug product that had been approved by the FDA for distribution within the United States.

5. Eli Lilly Corporation (Eli Lilly) had the exclusive right to manufacture Cialis for distribution within the United States.

The name “Cialis” was a trademark owned by Eli Lilly and is registered in the principal registry in the United States Patent and Trademark Office.

6. Levitra was a prescription drug product that had been approved by the FDA for distribution within the United States.

Bayer Corporation (Bayer) had the exclusive right to manufacture Levitra for distribution within the United States.

The name “Levitra” was a trademark owned by Eli Lilly and is registered in the principal registry in the United States Patent and Trademark Office.

7. The Food Drug and Cosmetic Act also regulates the importation, delivery, distribution and receipt of prescription drugs in interstate commerce. Under the Act, a prescription drug is deemed misbranded if its labeling is false or misleading in any particular manner. A prescription drug is also deemed to be counterfeit if it bears a trademark without the authorization of the registrant of the trademark.

PROBABLE CAUSE

8. Your affiant and other officers of the U.S. Immigration and Customs Enforcement (ICE) in Houston, Texas, have been involved in the investigation of an individual smuggling counterfeit pharmaceuticals produced in China into the United States. As part of this investigation agents were able to identify Cherry Wong (AKA: Miao-gun Huang, Xiaoke Huang; Miaogunn Huang) a Chinese National, as a major trafficker in counterfeit pharmaceuticals, which include Viagra, Cialis, Xenical and Reductil.

9. In or about January 2007, representatives from Eli Lilly begin communicating with an individual identifying herself as Cherry Wong and using the email address "Cialispharma@hotmail.com" to engage in a series of negotiations for the purchase of Viagra¹, Cialis² and Levitra³. On or about March 14, 2007, Wong provided her contact information as:

Name: Huang Xioke

City: Cixi, Ningbo

Province: Zhejiang

Country: China

10. On or about March 15, 2007, Wong provided additional contact information:

Name: Huang Miagoun

¹ Viagra (Sildenafil) is an oral prescription drug for male impotence, also known as erectile dysfunction.

² Cialis is a prescription drug used to treat erectile dysfunction in men.

City: Cixi, Ningbo

Province: Zhejiang

Country: China

11. On or about May 31, 2007, Wong sent an urgent email stating that one of her clients was arrested, and requesting that all future emails be sent to "arashcat@hotmail.com".
12. On or about October 29, 2007, undercover Eli Lilly operatives met with an Asian female in Bangkok, Thailand. During the meeting operatives inquired about her name "Cherry" for which Wong claimed her real name is "Wong Yen Yun".
13. On or about May 12, 2008, ICE, Bangkok, Thailand requested Huang's Thai immigration record from the Royal Thai Police (RTP) immigration. According to the RTP immigration record, Huang's personal entry and exit information is as follows:

Family Name:	Huang
Given Name:	Miao-gun
Date of Birth:	May 5, 1979
Nationality:	Chinese

³ Levitra is a prescription drug used in the treatment of erectile dysfunction.

Passport No: G09692847

Issuing Country: China

Entry and Exit Information:

1. Date of Entry: 10/28/2007 Flight: FD3623 PPN: G09692847

2. Date of Exit: 11/10/2007 Flight: FD3622 PPN: G09692847

14. On or about April 11, 2008, undercover ICE Agents sent Wong an email requesting pricing on various counterfeit pharmaceuticals, including Cialis, Viagra, Reductil⁴ and Xenical⁵.
15. On or about April 12, 2008, Wong replied to the email using the email address "liujie" "arashcat@hotmail.com". That email included pricing of:
- 500 Cialis, the price is \$1.20/pill, \$600
- 500 Viagra, the price is \$0.70/pill, \$350
- 500 Xenical, the price is \$1.20/pill, \$600.
- Wong stated the total price for the pills would be \$1550, plus shipping.
- Additionally, Wong provided a price of \$3.00 per pill for Reductil and inquired about shipping loose pills or in packaging and stated she would send her payment information the next day.

⁴ Reductil is an orally administered agent for the treatment of obesity, as an appetite suppressant.

⁵ XENICAL is a prescription medication that can help overweight people lose weight and keep it off.

16. On or about April 14, 2008, undercover ICE Agents replied to Wong, adding 250 Reductil pills to the order and requesting packaging for the pills.

17. On or about April 15, 2008, Wong replied with a price of \$750 dollars for the Reductil and a total cost for all the pills of \$2,300. Wong stated shipping would be an additional \$90, since she would split the shipment into 2 packages, one for the pills and one for the packaging, to enhance the probability of the packages arriving. Wong also provided the following bank information for the payment of \$2390.

Bank Name: Bank of China Yuyao Sub-Branch

Address: Shun Shui South Road No.58 Yuyao, Ningbo, China

Swift code: BKCHCNBJ92A

A/C No.: 4527118-0188-065189-5

Account Name: Chen Jie Li

18. On or about April 15, 2008, undercover ICE Agents placed an order with Cherry Wong for a delivery to an undercover address in Houston, Texas. Additionally undercover ICE Agents wired \$2390.00 USD to the aforementioned bank account provided by Wong and provided Wong a confirmation number of f10-06787-106-050624.

19. On or about April 18, 2008, Wong replied via email that all the pills except the Viagra were ready to ship. Wong explained that another big customer of hers had placed a larger order for Viagra with packaging earlier in the week and she was currently out of stock, but promised the pills would be shipped as soon as possible.
20. On or about April 18, 2008, undercover ICE Agents replied that the money had been wired and advising they would wait until the Viagra with packaging was available. Agents also inquired about the length of time for shipments to arrive and asked for a quicker alternative.
21. On or about April 19, 2008, Wong replied that it was impossible for the pills to arrive any faster and suggested that agents stock a larger order of pharmaceuticals to ensure a steady supply.
22. On or about April 30, 2008, Wong responded that the order had been shipped and provided a tracking number of EA963669357CN.
23. On or about May 5, 2008, the aforementioned purchase was received from Wong, containing approximately 500 Viagra tables in four count blister packs, 500 Cialis tablet in two count blister packs, 460 Xenical tablet in twenty-one count blister packs, and 210 Reductil tablets in 30 count blister packs.

24. On or about May 7, 2008, Wong sent an email to undercover ICE Agents in which she took full blame for the delay in shipping the pills and promised it would not happen again. Wong also provided her cellular telephone number of 86-15058240499 and requested agents call her in the morning to discuss future business.
25. On or about May 7, 2008, ICE Agents submitted to Pfizer (Viagra), Eli Lilly (Cialis), Roche (Xenical), and Abbott (Reductil), one sample packet requesting they be tested to determine the authenticity of the packaging and tablets.
26. Test conducted by Pfizer (Viagra), Eli Lilly (Cialis), and Abbott (Reductil), concluded the drug product packaging and tablets sent for testing were counterfeit. Additionally, the test conducted by Roche (Xenical), concluded the drug product packaging and tablets to be authentic.
27. On or about May 9, 2008, SSA Robert Sherman made an undercover phone call to Wong utilizing the aforementioned phone number provided by Wong. During the phone call SSA Sherman complained about the length of time it took to receive the aforementioned purchase made by undercover ICE Agents

and whether Wong could supply the pharmaceutical drug Norvasc⁶. Wong explained that the reason for the delay was due to a shortage of Viagra. Additionally, Wong confirmed her email address as “arashcat@hotmail.com”. Wong went on to confirm that she could supply anything SSA Sherman needed including Norvasc.

28. On or about May 9, 2008, undercover ICE Agents sent Wong an email confirming the conversation on the previous telephone call. The email again expressed frustration at the delays in receiving pills and asked if Wong could obtain Norvasc.
29. On or about May 10, 2008, Wong sent an email stating she was glad to talk with the undercover agent and confirming a price on Norvasc of \$1.50 per pill.
30. On or about May 13, 2008, SSA Sherman placed an undercover phone call to 86-15058240499 requesting to speak to “Cherry Wong”. The voice on the phone acknowledged SSA Sherman with “this is Cherry”. During the phone call Wong stated that she was located in Ningbo, China near Shanghai which is where the aforementioned undercover purchase was received from. Additionally, SSA Sherman inquired about Wong’s ability to provide the

⁶ Norvasc a drug for hypertension.

pharmaceutical drug Norvasc. Wong stated that she could supply pills and packaging in English and Chinese.

31. On or about May 13, 2008, undercover ICE Agents sent Wong an email confirming an order of 20 boxes of Norvasc and 500 tablets of Viagra with English language markings and asking for confirmation of wiring instructions.

32. On or about May 14, 2008, Wong replied that both the Norvasc and Viagra were in stock and could be shipped in three days. Wong confirmed the price as Norvasc, $\$1.50 \times 20 \times 7 = \210 , Viagra, $\$0.70 \times 500 = \350 and confirmed the shipping fee was \$80 for a total cost of \$640. Wong also confirmed the payment details as:

Bank Name: Bank of China Yuyao Sub-Branch

Address: Shun Shui South Road No. 58 Yuyao, Ningbo, China

Swift code: BKCHCNBJ92A

A/C No.: 4527118-0188-065189-5

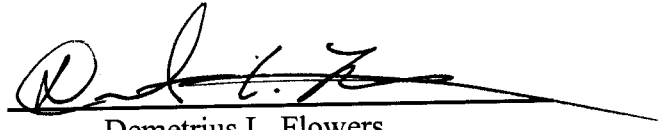
Account Name: Chen Jie Li

33. On or about May 14, 2008, undercover ICE Agents sent a wire transfer from an undercover account to Wong to pay for the shipment of the pills. On or about May 16, 2008, Wong sent an email acknowledging she received the money.

34. On or about May 20, 2008, Wong sent an email confirming the tracking number as EA868109440CN by EMS air shipping.
35. On or about May 30, 2008, ICE Agents discovered the package was intercepted by U.S. Customs and Border Protection (CBP) and sent an email to Wong stating the package had not arrived yet and the tracking number still shows it in Customs. Undercover agents questioned Wong as to whether she would replace the package and expressing a fear that Customs would be watching future shipments.
36. On or about May 30, 2008, the package that was seized by CBP/ San Francisco was forwarded to ICE SAC/Houston for processing.
37. On or about May 31, 2008, Wong responded to the email and confirmed that it had been seized by Customs. Wong stated she would check with her shipping customer on Monday but her rule was that if the pills were seized by Chinese Customs, she would replace it and if it was seized by U.S. Customs, she was not responsible for the cost. Wong also cautioned the undercover that if Customs officers asked any questions of the undercover agent, not to say anything and it would help keep both of them safe

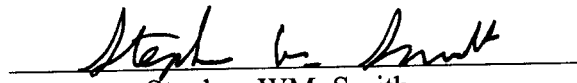
38. On or about June 2, 2008, the package was received from CBP/ San Francisco. Attached to the package was an EMS China Post tracking document tracking number EA868109440CN. The shipper was shown to be HU from Xiaoshou, China and was manifested as plastic particles, and listed a telephone number listed of 13757171365. Located inside the package were approximately 500 tables of Viagra in 4ct. blister packs, lot number of 211832382 and contained and expiration date of 12-2010. Also located in the package were approximately 140 Norvasc in 7ct blister packs, lot number 75805049 and contained an expiration date of 07-2012. Additionally, the packaging and inserts for the pills were included in the parcel.
39. On or about June 30, 2008, ICE Agents sent Pfizer one sample packet of Viagra and Norvasc requesting they be tested to determine the authenticity of the packaging and tablets.
40. On or about July 16, 2008, a test conducted by Pfizer on the aforementioned Viagra concluded the drug product packaging and tablets were counterfeit. Additionally, the test conducted on the Norvasc concluded the drug product packaging and tablets to be a diverted authentic product manufactured for the Asian market.

41. As of July 20, 2008, Cherry Wong was still communicating with undercover ICE Agents concerning the delay in shipping pills. Wong stated she could not ship any pills until after the Olympic Games, because the Chinese Customs were being very strict and inspecting all packages. Wong also stated many of her customers were out of stock but she promised to notify the agents as soon as it was safe to place an order.



Demetrius L. Flowers
Special Agent
U.S. Immigration and Customs Enforcement

Subscribed and sworn before me this September 5, 2008, and I find probable cause.
SWS



Stephen WM. Smith
UNITED STATES MAGISTRATE JUDGE